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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DAVID MEDNANSKY AND MARTINE
12 MEDNANSKY,

13 Plaintiffs,

14 vs.

15 U.S.D.A. Forest Service employees
16 THOMAS F. GILLETTE, SUSAN
17 DeSONIA, SALLY D. GOODRICH, RICH
18 TOBIN, TINA TERREL, AND 10
19 Unknown U.S.D.A. Forest Service
Employees, and the United States
Government of America,

20 Defendants.

CASE NO. 07CV1425-LAB (NLS)

**ORDER DENYING *EX PARTE*
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS ON APPEAL;
AND**

**CERTIFICATION THAT APPEAL
IS NOT TAKEN IN GOOD FAITH
(28 U.S.C. § 1915(a)(3))**

[Docket no. 54.]

21 On July 27, 2009, the Court issued an order dismissing this action without leave to
22 amend. On September 23, 2009, Plaintiffs filed a notice of appeal together with an *ex parte*
23 application to proceed *in forma pauperis* ("IFP") on appeal.

24 To proceed IFP on appeal, appellants must show not only a financial inability to pay
25 the required fees, but the basis for the appeal. See 28 U.S.C. § 1915(a); *see also Andrews*
26 *v. Cervantes*, 493 F.3d 1047, 1051 n.1 (9th Cir. 2007) (explaining that § 1915(a) applies to
27 all persons, not only prisoners) (citation omitted).

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1 Plaintiffs/Appellants have not set forth the basis for their appeal as is required in
 2 § 1915(a). Furthermore, their application shows they own outright their home, worth
 3 \$165,000, plus other assets. They also have modest income of \$10,200 annually from
 4 Social Security disability.

5 Even if Plaintiffs had otherwise shown why they should be allowed to proceed IFP,
 6 the Court would deny it because it appears they have been dishonest with the Court to gain
 7 an advantage either in the course of litigation or on appeal.

8 Although both Plaintiffs aver in the application under penalty of perjury that Plaintiff
 9 David Mednansky was last employed in 1991 and Plaintiff Martine Mednansky was last
 10 employed in March, 1998, the Amended Complaint is replete with allegations contradicting
 11 this in great detail. The Amended Complaint blames Defendants' behavior beginning around
 12 June 9, 2004 for causing both Plaintiffs' inability to work, resulting in great financial loss:

13 Their altered emotional state has affected their ability to pursue **their normal**
 14 **modes of maintaining themselves financially**. As a result they have not
 15 been able to be very successful in building up a business they started just
 16 before the June 9, 2004 incident. The incident put them into a tumultuous
 17 state that would not allow them to be efficient enough to pursue the level of
 thinking and discipline necessary for their work. . . . This has affected their
 finances and has put them into financial jeopardy, because **they could not**
effectively pursue financial gain due to effects the mental distress
brought them.

18 (Amended Complaint (Docket no. 39) at 32:4–17 (emphasis added).)

19 The Amended Complaint makes even more specific claims as to Ms. Mednansky,
 20 alleging Defendants' behavior "has put Ms. Mednansky into a tumultuous roller coaster
 21 emotional state which has interfered with her ability to concentrate at the high level
 22 necessary for her professional work." (Amended Complaint at 9:12–16.)

23 Plaintiffs also claimed, in great detail, that Defendants' behavior beginning around
 24 June, 2004 cut short Ms. Mednansky's profitable career as a scientific researcher and
 25 publisher:

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1 Plaintiff Ms. Mednansky has suffered the most, financially and emotionally,
 2 from the emotional distress. The nature of her work requires using an
 3 advance[] level of analytical skills and knowledge. Ms. Mednansky has
 4 worked all her life for the betterment of mankind by pursuing basic research
 5 in biological sciences. She has worked for the French government and the
 6 United States government as a high level research scientist. She holds the
 7 degree of Ph.D. and a unique more advanced degree of D.Sc. The nature
 8 of her work requires concentration well beyond that required for the average
 9 type of profession. She works at the cutting edge, or frontier of knowledge,
 10 in research. She is a well published author of numerous scientific papers
 11 and is recognized as a leading world figure in her area of research. Forest
 Service employees' harassment, intimidation, and threats have significantly
 affected her ability to function at the level sufficient for her to be productive.
As a result her career has been damaged starting from the June 9, 2004
event continuing to [the] present time. Because her emotional state is
in turmoil due to this distress she has suffered financially due to
inability to be at her top level of productivity. The damage the Forest
 Service has perpetrated upon Ms. Mednansky has not only caused her a
 financial loss but by preventing her to continue her research a loss has been
 suffered on all mankind. This is an outrage.

12 *Id.* at 32:18–33:13 (emphasis added). Although Plaintiffs also allege some property
 13 damage, emotional distress accompanied by physical symptoms, and dignitary harm for
 14 which nominal damages would be available, Plaintiffs' alleged lost income accounts for the
 15 bulk of their claimed economic damages.

16 Obviously, it cannot be true both that Ms. Mednansky last worked in March of 1998
 17 and that Defendants put an end to her work beginning in June, 2004. Thus, either the
 18 declaration of financial need is materially false and misleading, or else the damages sought
 19 in the Amended Complaint are based in large part on false claims that Plaintiffs have taken
 20 no steps to correct, or possibly both. In view of Plaintiffs' filings in this case, the Court
 21 considers it more likely that Plaintiffs were in fact unable to work at their usual employment
 22 long before the events of June, 2004 and therefore that Defendants' actions did not cause
 23 Plaintiffs the financial loss they claim it did. Attempting to litigate claims known to be fanciful
 24 and baseless would show bad faith, as would attempting to litigate at public expense based
 25 on a false declaration. Either way, the Court concludes this appeal is not taken in good faith.

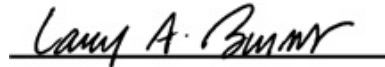
26 In a related case pending before this Court, *Mednansky v. Metz, et al.*, 09cv1478,
 27 Plaintiffs are seeking relief against different Defendants from conduct alleged to be similar
 28 to and connected with the conduct alleged in this case. The Court cannot sanction them in

1 that case for their conduct in this case, *Atchison, Topeka & Santa Fe Ry. Co. v. Hercules,*
2 *Inc.*, 146 F.3d 1071 (9th Cir. 1998), but they are admonished their conduct here could support
3 a finding of sanctionable bad faith in the related case or any other case they may become
4 involved in in the future. The Court is disinclined to sanction them in this case, though this
5 has no effect on any other penalties they might face. Plaintiffs are, however, sternly
6 admonished they must be truthful in all papers submitted to this Court, whether submitted
7 under penalty of perjury or not. See Fed. R. Civ. P. 11.

8 Plaintiffs'/Appellants' application to proceed IFP on appeal is hereby **DENIED** and the
9 Court **CERTIFIES** this appeal is not taken in good faith.

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11 **IT IS SO ORDERED.**

12 DATED: September 28, 2009

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14 **HONORABLE LARRY ALAN BURNS**
15 United States District Judge
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